

## Surface Transportation Board, DOT

## § 1151.2

to revoke will not automatically stay the transaction.

[61 FR 32355, June 24, 1996; 61 FR 36965, July 15, 1996]

### **§ 1150.45 Procedures and relevant dates—transactions under section 10902 that involve creation of Class I or Class II rail carriers.**

(a) To qualify for this exemption, applicant must serve a notice of intent to file a notice of exemption no later than 14 days before the notice of exemption is filed with the Board, and applicant must comply with the notice requirement of § 1150.42(e).

(b) The notice of intent must contain all the information required in § 1150.43 plus:

(1) A general statement of service intentions; and

(2) A general statement of labor impacts.

(c) The notice of intent must be served on:

(1) The Governor of each state in which track is to be sold;

(2) The state(s) Department of Transportation or equivalent agency;

(3) The national offices of the labor unions with employees on the affected line(s); and

(4) Shippers representing at least 50 percent of the volume of local traffic and traffic originating or terminating on the line(s) in the most recent 12 months for which data are available (beginning with the largest shipper and working down).

(d) Applicant must also file a verified notice of exemption conforming to the requirements of paragraph (b) of this section and of § 1150.44, and certify compliance with paragraphs (a), (b), and (c) of this section, attaching a copy of the notice of intent. In addition to the written submission, the notice must be submitted on a 3.5-inch diskette formatted for WordPerfect 5.1.

(e) The exemption will be effective 45 days after the notice is filed. The Board, through the Director of the Office of Proceedings, will publish a notice in the FEDERAL REGISTER within 16 days of the filing.

(f) If the notice contains false or misleading information, the exemption is void *ab initio*. A petition to revoke under 49 U.S.C. 10502(d) does not auto-

matically stay the transaction. Stay petitions must be filed at least 14 days before the exemption becomes effective. Replies will be due 7 days thereafter. To be considered, stay petitions must be timely served on the applicant.

(g) Applicant must preserve intact all sites and structures more than 50 years old until compliance with the requirements of section 106 of the National Historic Preservation Act, 16 U.S.C. 470f, is achieved.

[61 FR 32355, June 24, 1996, as amended at 62 FR 47584, Sept. 10, 1997; 71 FR 62213, Oct. 24, 2006]

## **PART 1151—FEEDER RAILROAD DEVELOPMENT PROGRAM**

Sec.

1151.1 Scope.

1151.2 Procedures.

1151.3 Contents of application.

1151.4 Board determination.

AUTHORITY: 49 U.S.C. 10907.

SOURCE: 48 FR 9654, Mar. 8, 1983, unless otherwise noted.

### **§ 1151.1 Scope.**

This part governs applications filed under 49 U.S.C. 10907. The Board can require the sale of a rail line to a financially responsible person. A rail line is eligible for a forced sale if it appears in category 1 or 2 of the owning railroad's system diagram map (but the railroad has not filed an application to abandon the line), or the public convenience and necessity, as defined in 49 U.S.C. 10907(c)(1), permit or require the sale of the line.

[48 FR 9654, Mar. 8, 1983, as amended at 56 FR 37861, Aug. 9, 1991; 64 FR 53268, Oct. 1, 1999]

### **§ 1151.2 Procedures.**

(a) Service. When an application is filed, applicant must concurrently serve a copy of the application by first class mail on:

(1) The owning railroad;

(2) All rail patrons who originated and/or received traffic on the line during the 12-month period preceding the month in which the application is filed;

(3) The designated State agency in the State(s) where the property is located;

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(4) County governments where the line is located;

(5) The National Railroad Passenger Corporation (Amtrak) (if Amtrak operates on the line);

(6) And the national offices of rail unions with employees on the line.

(b) Acceptance or rejection of an application.

(1) The Board, through the Director of the Office of Proceedings, will accept a complete application no later than 30 days after the application is filed by publishing a notice in the FEDERAL REGISTER. An application is complete if it has been properly served and contains substantially all information required by § 1151.3, except as modified by advance waiver. The notice will also announce the schedule for filing of competing applications and responses.

(2) The Board, through the Director of the Office of Proceedings, will reject an incomplete application by serving a decision no later than 30 days after the application is filed. The decision will explain specifically why the application was incomplete. A revised application may be submitted, incorporating portions of the prior application by reference.

(c) Competing applications.

(1) Unless otherwise scheduled in the notice, competing applications by other parties seeking to acquire all or any portion of the line sought in the initial application are due within 30 days after the initial application is accepted.

(2) The Board, through the Director of the Office of Proceedings, will issue a decision accepting or rejecting a competing application no later than 15 days after it is filed. A competing application will be rejected if it does not substantially contain the information required by § 1151.3, except as modified by advance waiver.

(d) Incomplete applications.

(1) If an applicant seeking to file an initial or competing application is unable to obtain required information that is primarily or exclusively within the personal knowledge of the owning carrier, the applicant may file an incomplete application if it files at the same time a request for discovery under 49 CFR part 1114 to obtain the

needed information from the owning carrier.

(2) The Board, through the Director of the Office of Proceedings, will by decision conditionally accept incomplete initial or competing applications, if the Director determines that the discovery sought is necessary for the application and primarily or exclusively within the knowledge of the owning carrier.

(3) When the information sought through discovery has been filed for an initial application, FEDERAL REGISTER notice under paragraph (b) of this section will be published.

(4) When the information sought through discovery has been filed for a competing application, a decision will be issued under paragraph (c) of this section.

(e) Comments. Unless otherwise scheduled in the notice, verified statements and comments addressing both the initial and competing applications must be filed within 60 days after the initial application is accepted.

(f) Replies. Unless otherwise scheduled in the notice, verified replies by applicants and other interested parties must be filed within 80 days after the initial application is accepted.

(g) Publication. If the Board finds that the public convenience and necessity require or permit sale of the line, the Board shall concurrently publish this finding in the FEDERAL REGISTER.

(h) Acceptance or rejection. If the Board concludes that sale of the line should be required, the applicant(s) must file a notice with the Board and the owning railroad accepting or rejecting the Board's determination. The notice must be filed within 10 days of the service date of the decision.

(i) Selection. If two or more applicants timely file notices accepting the Board's determination, the owning railroad must select the applicant to which it will sell the line and file notice of its selection with the Board and serve a copy on the applicants within 15 days of the service date of the Board decision.

(j) Waiver. Prior to filing an initial or competing application, an applicant may file a petition to waive or clarify specific portions of part 1151. A decision by the Director of the Office of

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Proceedings granting or denying a petition for waiver or clarification will be issued within 30 days of the date the petition is filed. Appeals from the Director's decision will be decided by the entire Board.

(k) Extension. Extensions of filing dates may be granted for good cause.

[56 FR 37861, Aug. 9, 1991]

### § 1151.3 Contents of application.

(a) The initial application and all competing applications must include the following information in the form of verified statements:

(1) Identification of the line to be purchased including:

(i) The name of the owning carrier; and

(ii) The exact location of the line to be purchased including milepost designations, origin and termination points, stations located on the line, and cities, counties and States traversed by the line.

(2) Identification of applicant including:

(i) The applicant's name and address;

(ii) The name, address, and phone number of the representative to receive correspondence concerning this application;

(iii) A description of applicant's affiliation with any railroad; and

(iv) If the applicant is a corporation, the names and addresses of its officers and directors.

(3) Information sufficient to demonstrate that the applicant is a financially responsible person. In this regard, the applicant must demonstrate its ability:

(i) To pay the higher of the net liquidation value (NLV) or going concern value (GCV) of the line; and

(ii) To cover expenses associated with providing services over the line (including, but not limited to, operating costs, rents, and taxes) for at least the first 3 years after acquisition of the line.

(4) An estimate of the NLV and the GCV of the line and evidence in support of these estimates.

(5) An offer to purchase the line at the higher of the two estimates submitted pursuant to paragraph (a)(4) of this section.

(6) The dates for the proposed period of operation of the line covered by the application.

(7) An operating plan that identifies the proposed operator; attaches any contract that the applicant may have with the proposed operator; describes in detail the service that is to be provided over the line, including all inter-line connections; and demonstrates that adequate transportation will be provided over the line for at least 3 years from the date of acquisition.

(8) A description of the liability insurance coverage carried by applicant or any proposed operator. If trackage rights are requested, the insurance must be at a level sufficient to indemnify the owning railroad against all personal and property damage that may result from negligence on the part of the operator in exercising the track-age rights.

(9) Any preconditions (such as assuming a share of any subsidy payments) that will be placed on shippers in order for them to receive service, and a statement that if the application is approved, no further preconditions will be placed on shippers without Board approval. (This Statement Will Be Binding Upon Applicant if the Application is Approved.)

(10) The name and address of any person(s) who will subsidize the operation of the line.

(11) A statement that the applicant will seek a finding by the Board that the public convenience and necessity permit or require acquisition, or a statement that the line is currently in category 1 or 2 of the owning railroad's system diagram map.

(i) If the applicant seeks a finding of public convenience and necessity, the application must contain detailed evidence that permits the Board to find that:

(A) The rail carrier operating the line refused within a reasonable time to make the necessary efforts to provide adequate service to shippers who transport traffic over the line;

(B) The transportation over the line is inadequate for the majority of shippers who transport traffic over the line;

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(C) The sale of the line will not have a significantly adverse financial effect on the rail carrier operating the line;

(D) The sale of the line will not have an adverse effect on the overall operational performance of the rail carrier operating the line; and

(E) The sale of the line will be likely to result in improved railroad transportation for shippers who transport traffic over the line.

(ii) If the applicant seeks a finding that the line is currently in category 1 or 2 of the owning carrier's system diagram map, the relevant portion of the current map must be attached to the application.

(12) A statement detailing applicant's election of exemption from the provisions of Title 49, United States Code, and a statement that if the application is approved, no further exemptions will be elected. (This Statement Will Be Binding Upon the Applicant if the Application is Approved.)

(13) A description of any trackage rights sought over the owning railroad that are required to allow reasonable interchange or to move power equipment or empty rolling stock between noncontiguous feeder lines operated by the applicant, and an estimate of the reasonable compensation for such rights, including full explanation of how the estimate was reached. The description of the trackage rights shall include the following information: Milepost or other identification for each segment of track; the need for the trackage rights (interchange of traffic, movement of equipment, etc.); frequency of operations; times of operation; any alternative to the use of trackage rights; and any other pertinent data. Trackage rights that are necessary for the interchange of traffic shall be limited to the closest point to the junction with the owning railroad's line that allows the efficient interchange of traffic. A statement shall be included that the applicant agrees to have its train and crew personnel take the operating rules examination of the railroad over which the operating rights are exercised.

(14) If applicant requests Board prescribed joint rates and divisions in the feeder line proceeding, a description of any joint rate and division agreement

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that must be established. The description must contain the following information:

(i) The railroad(s) involved;

(ii) The estimated revenues that will result from the division(s);

(iii) The total costs of operating the line segment purchased (including any trackage rights fees).

(iv) Information sufficient to allow the Board to determine that the line sought to be acquired carried less than 3 million gross ton-miles of traffic per mile in the preceding calendar year<sup>1</sup>; and

(v) Any other pertinent information.

(15) The extent to which the owning railroad's employees who normally service the line will be used.

(16) A certificate stating that the service requirements of § 1151.2(a) have been met.

(b) Applicant must make copies of the application available to interested parties upon request.

[48 FR 9654, Mar. 8, 1983, as amended at 56 FR 37862, Aug. 9, 1991; 64 FR 53268, Oct. 1, 1999]

#### § 1151.4 Board determination.

(a) The Board shall determine whether each applicant is a financially responsible person. To be a financially responsible person, the Board must find that:

(1) The applicant is capable of paying the constitutional minimum value of the line and able to assure that adequate transportation will be provided over the line for at least 3 years;

(2) The applicant is not a class I or class II railroad or an entity affiliated with a class I or class II railroad.

(b) If the Board finds that one or more applicants are financially responsible parties, it shall determine whether the involved line or line segment is a qualified line. A line is a qualified line if:

(1) Either

<sup>1</sup>Gross ton-miles are calculated by adding the ton-miles of the cargo and the ton-miles related to the tare (empty) weight of the freight cars used to transport the cargo in the loaded movement. In calculating the gross ton-miles, only those related to the portion of the segment purchased shall be included.

(i) The public convenience and necessity require or permit the sale of line or line segment; or

(ii) The line or line segment is classified in category 1 or 2 of the owning carrier's system diagram map; and

(2) The traffic level on the line or line segment sought to be acquired was less than 3 million gross ton-miles of traffic per mile in the preceding calendar year (Note: This finding will not be required for applications filed after October 1, 1983).

(c) If the Board finds that one or more financially responsible parties have offered to buy a qualifying line of railroad, the Board shall set the acquisition cost of the line at the higher of NLV or GCV, order the owning carrier to sell the rail line to one of the financially responsible applicants, and resolve any related issues raised in the application. If an applicant and the owning railroad agree on an acquisition price, that price shall be the final price.

(d) If trackage rights are sought in the application, the Board shall, based on the evidence of record, set the adequate compensation for such rights, if the parties have not agreed.

(e) If the applicant requests the Board to set joint rates or divisions and the line carried less than 3 million gross ton-miles of traffic per mile during the preceding calendar year, the Board shall, pursuant to 49 U.S.C. 10705(a), establish joint rates and divisions based on the evidence of record in the proceeding. Unless specifically requested to do so by the selling carrier, the Board will not set the rate for the selling railroad's share of the joint rate at less than the applicable level (for the year in which the acquisition is made) set by 49 U.S.C. 10709(d)(2), which limits Board maximum ratemaking jurisdiction to rates above certain cost/price ratios.

## **PART 1152—ABANDONMENT AND DISCONTINUANCE OF RAIL LINES AND RAIL TRANSPORTATION UNDER 49 U.S.C. 10903**

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1152.60 Special rules.

AUTHORITY: 11 U.S.C. 1170; 16 U.S.C. 1247(d) and 1248; 45 U.S.C. 744; and 49 U.S.C. 701 note